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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v.

BLACKBIRD CAPITAL PARTNERS,  
LLC, a Nevada Limited Liability Company;  
ANDREW D. KELLEY, an individual; and  
PAUL H. SHUMWAY, an individual,

Defendants.

**DEFENDANT PAUL H.  
SHUMWAY'S MOTION FOR A  
PROTECTIVE ORDER AND STAY  
OF DEPOSITION**

Case No. 2:16-cv-01199-TC

Judge Tena Campbell

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and DUCivR 26-2(b),  
Defendant Paul H. Shumway, by and through counsel, moves the Court for a protective order and  
stay of his deposition in this matter.

**PRECISE RELIEF SOUGHT AND GROUNDS**

On December 1, 2016, the SEC noticed Mr. Shumway's deposition for December 14, 2016. Through the Securities and Exchange Commission, United States Attorney's Office for the District of Utah, and/or the local office of the Federal Bureau of Investigation, the United States

is currently pursuing this civil action against Mr. Shumway, a criminal case against Andrew D. Kelley, who is a co-defendant in the civil case, and an investigation of possible criminal charges against Mr. Shumway.

Citing concerns that their constitutional rights may be affected by the overlapping parallel proceedings, both Mr. Kelley and Mr. Shumway have moved for a stay of the civil case pending the resolution of the criminal cases. For the same reasons articulated in his Motion for Stay of Case, Mr. Shumway moves for a protective order barring the SEC from taking his deposition, at least until the defendants' respective motions for a stay have been resolved.

Furthermore, pursuant to DUCivR 26-2(b), the scheduled deposition should be automatically stayed until this motion has been heard by the Court.<sup>1</sup>

### **STATEMENT OF FACTS**

1. On or about November 28, 2016, the SEC filed this case against Blackbird Capital Partners, Mr. Kelley, and Mr. Shumway. Complaint, *SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 1.

2. SEC also obtained a temporary restraining order and a freeze of certain assets. Temporary Restraining Order and Order Accelerating Discovery and Prohibiting the Destruction of Documents, *SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 7; Order Freezing Assets, *SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 8.

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<sup>1</sup> Mr. Shumway concurrently filed an Expedited Motion for Stay of Case which also bears on the instant motion.

3. Between November 28, 2016 and present, Mr. Shumway received a copy of the Complaint, retained counsel, and appeared before the Court to present argument on the freeze of certain assets, an expedited discovery plan, and the preliminary hearing, which is currently set for January 6, 2017. Minute Entry, *SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 15.

4. On December 1, 2016, the Court extended its prior temporary restraining order, modified the freeze of assets, and permitted accelerated discovery. *See Order Accelerating Discovery, SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 17 (permitting depositions on three days written notice); *Order, SEC v. Blackbird Capital Partners, LLC*, Case No. 2:16-cv-199 (Nov. 28, 2016), ECF No. 16.

5. Jacob Strain of the United States Attorney's Office for the District of Utah has notified Mr. Shumway's counsel the United States is investigating Mr. Shumway, and that he may be charged in a superseding indictment.

6. The Federal Bureau of Investigation has contacted Mr. Shumway to request an interview.

7. Recently, the SEC notified Mr. Shumway's counsel that it was contemplating an amendment to the Complaint so that it would include a scienter requirement.

8. The SEC noticed Mr. Shumway's deposition on December 1, 2016. It is currently scheduled for December 14, 2016.

## **ARGUMENT**

Pursuant DUCivR 26-2(b), Mr. Shumway's deposition is automatically stayed pending the outcome of the motions for stay of the case. Mr. Shumway's deposition was noticed on

December 1, 2016. He filed this motion within three business days of the notice. Accordingly, it is automatically stayed by operation of DUCivR26-2(b).

In addition to DUCivR 26-2(b), a protective order and stay of Mr. Shumway's deposition is appropriate for the reasons set forth in Mr. Shumway's Expedited Motion for Stay of Case, which are adopted and incorporated by reference.

DATED this 6th day of December, 2016.

SNOW CHRISTENSEN & MARTINEAU

/s/ Samuel Alba

Samuel Alba  
Daniel D. Hill  
Nathanael J. Mitchell  
*Attorneys for Paul H. Shumway*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December, 2016, I caused a true and correct copy of the foregoing to be delivered electronically, via CM/ECF or email, to the following:

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